

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT G. LOPEZ, and individual,

Plaintiff,

v.

BONANZA.COM, INC., et al.

Defendants.

Case No. 17-CV-8493 (LAP)

**DEFENDANT SHOPIFY (USA) INC.'S
MOTION TO DISMISS ROBERT G.
LOPEZ'S FOURTH AMENDED
COMPLAINT PURSUANT TO FED. R.
CIV. PROC. RULES 12(B)(2), 12(B)(3),
AND 12(B)(6)**

**DEFENDANT SHOPIFY (USA) INC.'S NOTICE OF MOTION AND MOTION TO
DISMISS ROBERT G. LOPEZ'S FOURTH AMENDED COMPLAINT PURSUANT TO
FED. R. CIV. PROC. RULES 12(B)(2), 12(B)(3), AND 12(B)(6) AND NOTICE TO *PRO SE*
LITIGANT WHO OPPOSES A RULE 12 MOTION
SUPPORTED BY MATTERS OUTSIDE THE PLEADINGS**

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*Attorneys Specially Appearing for Defendant
SHOPIFY (USA) INC.*

PLEASE TAKE NOTICE that Defendant Shopify (USA) Inc. (“Shopify USA”), by and through its undersigned attorneys, will, and hereby does, respectfully move the Court before the Honorable Loretta A. Preska, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 12A, New York, New York 10007, at a date and time to be determined by the Court, for an order pursuant Rules 12(b)(2), 12(b)(3), and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing Plaintiff Robert G. Lopez’s Fourth Amended Complaint (ECF No. 214) without leave to amend for lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief can be granted, and for such other and further relief as the Court may deem just and proper.

This Motion is based on this Notice of Motion and Motion, upon the Memorandum of Law submitted herewith, upon the Declarations of Erin Zipes and Zachary J. Alinder filed in support herewith, and the exhibits attached thereto, upon the pleadings in this matter including but not limited to the Fourth Amended Complaint, upon any pleadings or other matters submitted on Reply, upon any argument or other evidence at any hearing in support of the Motion, and upon such other and further matters as the Court deems appropriate.

PLEASE TAKE FURTHER NOTICE that Plaintiff’s Opposition, if any, shall be served on or before August 3, 2018 and Shopify USA’s Reply shall be served on or before August 10, 2018.

Further, because Shopify USA’s Motion to Dismiss refers to matters outside of the pleadings in making its Motion, including the Declarations referenced above, **PLEASE TAKE FURTHER NOTICE** as follows pursuant to Local Civil Rule 12.1:

**Notice to Pro Se Litigant Who Opposes a Rule 12 Motion
Supported by Matters Outside the Pleadings**

The defendant in this case has moved to dismiss or for judgment on the pleadings

pursuant to Rule 12(b) or 12(c) of the Federal Rules of Civil Procedure, and has submitted additional written materials. This means that the defendant has asked the Court to decide this case without a trial, based on these written materials. You are warned that the Court may treat this motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For this reason, THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION ON TIME by filing sworn affidavits as required by Rule 56(c) and/or other documents. The full text of Rule 56 of the Federal Rules of Civil Procedure Page - 28 - is attached.

In short, Rule 56 provides that you may NOT oppose the defendant's motion simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising specific facts that support your claim. If you have proof of your claim, now is the time to submit it. Any witness statements must be in the form of affidavits. An affidavit is a sworn statement of fact based on personal knowledge stating facts that would be admissible in evidence at trial. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to defendant's motion.

If you do not respond to the motion on time with affidavits and/or documents contradicting the facts asserted by the defendant, the Court may accept defendant's facts as true.

Your case may be dismissed and judgment may be entered in defendant's favor without a trial. If you have any questions, you may direct them to the Pro Se Office.

Respectfully submitted,

DATED: July 20, 2018

SIDEMAN & BANCROFT LLP

By: /s/ Zachary J. Alinder

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